

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2306

Introduced by Assembly Member Chau

February 21, 2014

An act to amend Section 1708.8 of the Civil Code, relating to ~~unmanned aircraft systems~~ privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2306, as amended, Chau. ~~Unmanned aircraft systems.~~
Constructive invasion of privacy: liability.

Under existing law, except as specified, a person is liable for constructive invasion of privacy when a person attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression, through the use of a visual or auditory enhancing device, of another person engaging in a personal or familial activity under circumstances in which the other person had a reasonable expectation of privacy. Existing law subjects a person who commits a constructive invasion of privacy to specified damages and civil fines.

This bill would expand a person's potential liability for constructive invasion of privacy, by removing the limitation that the person use a visual or auditory enhancing device, and would instead make the person liable when using any device to engage in the above-described unlawful activity.

~~Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil unmanned aircraft systems, commonly known as drones, into the national airspace system by September 30, 2015. Existing federal law~~

~~requires the Administrator of the Federal Aviation Administration to develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system by December 31, 2015.~~

~~This bill would state the intent of the Legislature to enact legislation that would prohibit the use of an unmanned aircraft system to invade a person's privacy.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1708.8 of the Civil Code is amended to
2 read:

3 1708.8. (a) A person is liable for physical invasion of privacy
4 when the defendant knowingly enters onto the land of another
5 person without permission or otherwise committed a trespass in
6 order to physically invade the privacy of the plaintiff with the
7 intent to capture any type of visual image, sound recording, or
8 other physical impression of the plaintiff engaging in a personal
9 or familial activity and the physical invasion occurs in a manner
10 that is offensive to a reasonable person.

11 (b) A person is liable for constructive invasion of privacy when
12 the defendant attempts to capture, in a manner that is offensive to
13 a reasonable person, any type of visual image, sound recording,
14 or other physical impression of the plaintiff engaging in a personal
15 or familial activity under circumstances in which the plaintiff had
16 a reasonable expectation of privacy, through the use of a visual or
17 auditory enhancing any device, regardless of whether there is a
18 physical trespass, if this image, sound recording, or other physical
19 impression could not have been achieved without a trespass unless
20 the visual or auditory enhancing device was used.

21 (c) An assault or false imprisonment committed with the intent
22 to capture any type of visual image, sound recording, or other
23 physical impression of the plaintiff is subject to subdivisions (d),
24 (e), and (h).

25 (d) A person who commits any act described in subdivision (a),
26 (b), or (c) is liable for up to three times the amount of any general
27 and special damages that are proximately caused by the violation
28 of this section. This person may also be liable for punitive damages,

1 subject to proof according to Section 3294. If the plaintiff proves
2 that the invasion of privacy was committed for a commercial
3 purpose, the defendant shall also be subject to disgorgement to the
4 plaintiff of any proceeds or other consideration obtained as a result
5 of the violation of this section. A person who comes within the
6 description of this subdivision is also subject to a civil fine of not
7 less than five thousand dollars (\$5,000) and not more than fifty
8 thousand dollars (\$50,000).

9 (e) A person who directs, solicits, actually induces, or actually
10 causes another person, regardless of whether there is an
11 employer-employee relationship, to violate any provision of
12 subdivision (a), (b), or (c) is liable for any general, special, and
13 consequential damages resulting from each said violation. In
14 addition, the person that directs, solicits, actually induces, or
15 actually causes another person, regardless of whether there is an
16 employer-employee relationship, to violate this section shall be
17 liable for punitive damages to the extent that an employer would
18 be subject to punitive damages pursuant to subdivision (b) of
19 Section 3294. A person who comes within the description of this
20 subdivision is also subject to a civil fine of not less than five
21 thousand dollars (\$5,000) and not more than fifty thousand dollars
22 (\$50,000).

23 (f) (1) The transmission, publication, broadcast, sale, offer for
24 sale, or other use of any visual image, sound recording, or other
25 physical impression that was taken or captured in violation of
26 subdivision (a), (b), or (c) shall not constitute a violation of this
27 section unless the person, in the first transaction following the
28 taking or capture of the visual image, sound recording, or other
29 physical impression, publicly transmitted, published, broadcast,
30 sold or offered for sale, the visual image, sound recording, or other
31 physical impression with actual knowledge that it was taken or
32 captured in violation of subdivision (a), (b), or (c), and provide
33 compensation, consideration, or remuneration, monetary or
34 otherwise, for the rights to the unlawfully obtained visual image,
35 sound recording, or other physical impression.

36 (2) For the purposes of paragraph (1), “actual knowledge” means
37 actual awareness, understanding, and recognition, obtained prior
38 to the time at which the person purchased or acquired the visual
39 image, sound recording, or other physical impression, that the
40 visual image, sound recording, or other physical impression was

1 taken or captured in violation of subdivision (a), (b), or (c). The
2 plaintiff shall establish actual knowledge by clear and convincing
3 evidence.

4 (3) Any person that publicly transmits, publishes, broadcasts,
5 sells or offers for sale, in any form, medium, format or work, a
6 visual image, sound recording, or other physical impression that
7 was previously publicly transmitted, published, broadcast, sold or
8 offered for sale, by another person, is exempt from liability under
9 this section.

10 (4) If a person's first public transmission, publication, broadcast,
11 or sale or offer for sale, of a visual image, sound recording, or
12 other physical impression that was taken or captured in violation
13 of subdivision (a), (b), or (c), does not constitute a violation of this
14 section, that person's subsequent public transmission, publication,
15 broadcast, sale or offer for sale, in any form, medium, format or
16 work, of the visual image, sound recording, or other physical
17 impression, does not constitute a violation of this section.

18 (5) This section applies only to a visual image, sound recording,
19 or other physical impression that is captured or taken in California
20 in violation of subdivision (a), (b), or (c) after January 1, 2010,
21 and shall not apply to any visual image, sound recording, or other
22 physical impression taken or captured outside of California.

23 (6) Nothing in this subdivision shall be construed to impair or
24 limit a special motion to strike pursuant to Section 425.16, 425.17,
25 or 425.18 of the Code of Civil Procedure.

26 (7) This section shall not be construed to limit all other rights
27 or remedies of the plaintiff in law or equity, including, but not
28 limited to, the publication of private facts.

29 (g) This section shall not be construed to impair or limit any
30 otherwise lawful activities of law enforcement personnel or
31 employees of governmental agencies or other entities, either public
32 or private who, in the course and scope of their employment, and
33 supported by an articulable suspicion, attempt to capture any type
34 of visual image, sound recording, or other physical impression of
35 a person during an investigation, surveillance, or monitoring of
36 any conduct to obtain evidence of suspected illegal activity or
37 other misconduct, the suspected violation of any administrative
38 rule or regulation, a suspected fraudulent conduct, or any activity
39 involving a violation of law or business practices or conduct of

1 public officials adversely affecting the public welfare, health or
2 safety.

3 (h) In any action pursuant to this section, the court may grant
4 equitable relief, including, but not limited to, an injunction and
5 restraining order against further violations of subdivision (a), (b),
6 or (c).

7 (i) The rights and remedies provided in this section are
8 cumulative and in addition to any other rights and remedies
9 provided by law.

10 (j) It is not a defense to a violation of this section that no image,
11 recording, or physical impression was captured or sold.

12 (k) For the purposes of this section, “for a commercial purpose”
13 means any act done with the expectation of a sale, financial gain,
14 or other consideration. A visual image, sound recording, or other
15 physical impression shall not be found to have been, or intended
16 to have been captured for a commercial purpose unless it is
17 intended to be, or was in fact, sold, published, or transmitted.

18 (l) For the purposes of this section, “personal and familial
19 activity” includes, but is not limited to, intimate details of the
20 plaintiff’s personal life, interactions with the plaintiff’s family or
21 significant others, or other aspects of the plaintiff’s private affairs
22 or concerns. “Personal and familial activity” does not include
23 illegal or otherwise criminal activity as delineated in subdivision
24 (g). However, “personal and familial activity” shall include the
25 activities of victims of crime in circumstances under which
26 subdivision (a), (b), or (c) would apply.

27 (m) (1) A proceeding to recover the civil fines specified in
28 subdivision (d) or (e) may be brought in any court of competent
29 jurisdiction by a county counsel or city attorney.

30 (2) Fines collected pursuant to this subdivision shall be allocated,
31 as follows:

32 (A) One-half shall be allocated to the prosecuting agency.

33 (B) One-half shall be deposited in the Arts and Entertainment
34 Fund, which is hereby created in the State Treasury.

35 (3) Funds in the Arts and Entertainment Fund created pursuant
36 to paragraph (2) may be expended by the California Arts Council,
37 upon appropriation by the Legislature, to issue grants pursuant to
38 the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter
39 9 (commencing with Section 8750) of Division 1 of Title 2 of the
40 Government Code).

1 (4) The rights and remedies provided in this subdivision are
2 cumulative and in addition to any other rights and remedies
3 provided by law.

4 (n) The provisions of this section are severable. If any provision
5 of this section or its application is held invalid, that invalidity shall
6 not affect other provisions or applications that can be given effect
7 without the invalid provision or application.

8 ~~SECTION 1. It is the intent of the Legislature to enact~~
9 ~~legislation that would prohibit the use of an unmanned aircraft~~
10 ~~system to invade a person's privacy.~~